IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7455 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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ARCHANA MAHAVIR JAIN W/O MAHAVIR KUMAR JAIN - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

MR KIRAN R JANI for Petitioner No(s).: 1.
MR SATISH R PATEL for Petitioner No(s).: 1.
Mr.P.D.Bhate, AGPfor Respondent No(s).: 1,2,3.
MR JITENDRA MALKAN for Respondent No(s).: 4.
MIASHAIKHfor Respondent No(s).: 4.

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CORAM :HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 23/06/2005

ORAL JUDGMENT

1. By filing this petition, the detenu through his wife has challenged the detention order dated 21.11.2003 passed by the District Magistrate, Kheda at Nadiad in exercise of the powers conferred upon her under sub-section(2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (“the Act” for short), as, the District Magistrate, Kheda at Nadiad acting under the Act arrived at the subjective satisfaction that it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of supplies of essential commodities like petrol which is essential to the community.

1. Along with the detention order, the detenu was also served with the grounds of detention of the same date.

2. Heard the learned advocate appearing for the petitioner Mr.K.R.Jani, learned AGP Mr.Bhate for respondent nos.1 to 3 and Mr.M.A.Shaikh for respondent no.4. Affidavit-in-reply filed on behalf of respondent Nos. 1 and 2 and counter affidavit on behalf of the Union of India were also taken into consideration.

3. Learned advocate appearing on behalf of the petitioner detenu has submitted that the detention order came to be passed on 21.11.2003 by the District Magistrate, Kheda at Nadiad by which the detenu was detained on 19.04.2005. Thereafter, the present petition is filed by the petitioner, who is the wife of the detenu. It is submitted by the learned advocate for the petitioner that the wife of the detenu has made one representation dated 21.04.2005 which is addressed to the detaining authority and the said representation has not been promptly and expeditiously either transmitted to higher authority or have been considered with due care and diligence at every level by all respective authorities to whom it had been forwarded for either its opinion or consideration, and, therefore, the impugned order is null, void and malafide which requires to be quashed and set aside. It is further submitted that the petitioner detenu was not supplied with the translated copies of page nos.351 to 372 which are in English language which the detenu does not know. It is, therefore, submitted that the subjective satisfaction of the detaining authority is vitiated on this ground alone, and, therefore, the impugned detention order is required to be quashed and set aside.

1. The impugned order came to be challenged by the petitioner detenu on various grounds. One of the grounds is non-supply of translated copies of the documents relied upon by the detaining authority while passing the detention order. In this connection, he has relied upon the decision in the case of Smt.Icchu Devi Choraria Vs. Union of India and others, reported in AIR 1980 SC 1983. He has also relied upon the decision in the case of Mohd. Zakir Vs. Delhi Administration and others, reported in AIR 1982 SC 696 wherein the head-note reads as under.:

   “Detention – Documents relied on by authorities not supplied with grounds of detention – Detention is illegal.”

   It is further held by the Supreme Court as under.:

   “It is manifest that the question of demanding the documents is wholly irrelevant

because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

2. The facts of this case are squarely covered by the decisions referred to above. In the present case, translated copies of the documents though relied upon by the authority while passing the order of detention have not been supplied to the detenu, and, therefore, it is in clear breach of the provisions of Article 22(5) of the Constitution of India and that the petitioner detenu is deprived of knowing the grounds and making effective representation against the order of detention. Learned advocate appearing for the petitioner does not press any other grounds since this petition succeeds only on this ground. In that view of the matter, the detention order cannot be sustained and deserves to be quashed and set aside on this ground alone.
3. In view of what is stated above, the petition is allowed. The order of detention dated 21.11.2003 is quashed and set aside. The detenu Mahavirbhai Fulchandbhai Jain is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

srilatha